

Rev. 4/18

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT
CIVIL APPEAL STATEMENT

Please TYPE. Attach additional pages if necessary.

11th Circuit Docket Number: 23-12923-D

Caption: Caster, et al. v. Allen, et al.	District and Division: Northern District of Alabama, Southern Division Name of Judge: Manasco/Marcus/Moorer Nature of Suit: 441 Civil Rights Voting <hr/> Date Complaint Filed: 11/04/2021 District Court Docket Number: 2:21-cv-1536-AMM <hr/> Date Notice of Appeal Filed: September 8, 2023 <input type="checkbox"/> Cross Appeal <input type="checkbox"/> Class Action <hr/> Has this matter previously been before this court? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If Yes, provide (a) Caption: Caster, et al. v Merrill, et al. (b) Citation: (c) Docket Number: 22-10272
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Attorney Name	Mailing Address	Telephone, Fax, Email
For Appellant: <input type="checkbox"/> Plaintiff <input checked="" type="checkbox"/> Defendant <input type="checkbox"/> Other (Specify)	See attached	

For Appellee:	See attached	
<input checked="" type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Other (Specify)		

Please CIRCLE/CHECK/COMPLETE the items below and on page 2 that apply.

Jurisdiction	Nature of Judgment	Type of Order	Relief
<input checked="" type="checkbox"/> Federal Question <input type="checkbox"/> Diversity <input type="checkbox"/> US Plaintiff <input type="checkbox"/> US Defendant	<input type="checkbox"/> Final Judgment, 28 USC 1291 <input checked="" type="checkbox"/> Interlocutory Order, 28 USC 1292(a)(1) <input type="checkbox"/> Interlocutory Order Certified, 28 USC 1292(b) <input type="checkbox"/> Interlocutory Order, Qualified Immunity <input type="checkbox"/> Final Agency Action (Review) <input type="checkbox"/> 54(b)	<input type="checkbox"/> Dismissal/Jurisdiction <input type="checkbox"/> Default Judgment <input type="checkbox"/> Summary Judgment <input type="checkbox"/> Judgment/Bench Trial <input type="checkbox"/> Judgment/Jury Verdict <input type="checkbox"/> Judgment/Directed Verdict/NOV <input checked="" type="checkbox"/> Injunction <input type="checkbox"/> Other _____	Amount Sought by Plaintiff: \$ _____ Amount Sought by Defendant: \$ _____ Awarded: \$ _____ to _____ Injunctions: <input type="checkbox"/> TRO <input checked="" type="checkbox"/> Preliminary <input checked="" type="checkbox"/> Granted <input type="checkbox"/> Permanent <input type="checkbox"/> Denied

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11th Circuit Docket Number: _____

Based on your present knowledge:

- (1) Does this appeal involve a question of First Impression? ☐ Yes ☒ No
What is the issue you claim is one of First Impression? _____

- (2) Will the determination of this appeal turn on the interpretation or application of a particular case or statute? ☒ Yes ☐ No

If Yes, provide

- (a) Case Name/Statute Section 2 of the Voting Rights Act
(b) Citation 52 U.S.C., Section 10301
(c) Docket Number if unreported _____

- (3) Is there any case now pending or about to be brought before this court or any other court or administrative agency that

- (a) Arises from substantially the same case or controversy as this appeal? ☒ Yes ☐ No
(b) Involves an issue that is substantially the same, similar, or related to an issue in this appeal? ☒ Yes ☐ No

If Yes, provide

- (a) Case Name Milligan, et al. v Allen, et al.
(b) Citation _____
(c) Docket Number if unreported 2:21-cv-1530 (N.D. Ala.); 23-12922-D (11th Cir.); 23A231 (U.S.); 23A241 (U.S.)
(d) Court or Agency Northern District of Alabama; Eleventh Circuit; United States Supreme Court

- (4) Will this appeal involve a conflict of law

- (a) Within the Eleventh Circuit? ☒ Yes ☐ No
(b) Among circuits? ☒ Yes ☐ No

If Yes, explain briefly:

See attached

- (5) Issues proposed to be raised on appeal, including jurisdictional challenges:

See attached

I CERTIFY THAT I SERVED THIS CIVIL APPEAL STATEMENT ON THE CLERK OF THE U.S. COURT OF APPEALS FOR THE ELEVENTH CIRCUIT AND

SERVED A COPY ON EACH PARTY OR THEIR COUNSEL OF RECORD, THIS _____ DAY OF _____, _____.

Edmund G. LaCour Jr.

NAME OF COUNSEL (Print)

/s/ Edmund G. LaCour Jr.

SIGNATURE OF COUNSEL

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(4) This appeal involves a conflict of law among circuits

The Eleventh Circuit and other circuits have held that when a redistricting law that was held to have likely violated federal law has been repealed and replaced by a new redistricting law, the reviewing court “may only consider whether the proffered remedial plan is legally unacceptable because it violates anew constitutional or statutory voting rights—that is, whether it fails to meet the same standards applicable to an original challenge of a legislative plan in place.” *McGhee v. Granville Cnty., N.C.*, 860 F.2d 110, 115 (4th Cir. 1988); *see also Dillard v. Crenshaw County*, 831 F.2d 246, 250 (11th Cir. 1987) (“To find a violation of Section 2, there must be evidence that the new plan denies equal access to the political process.”); *Miss. St. Chapter, Operation Push. v. Mabus*, 932 F.2d 400, 406-07 (5th Cir. 1991) (“The federal district court is precluded from substituting even what it considers to be an objectively superior plan for an otherwise constitutionally and legally valid plan that has been proposed and enacted by the appropriate state governmental unit.”).

In contrast, the district court here “reject[ed] the assertion that the Plaintiffs must” prove that Alabama’s newly enacted redistricting law violates federal law before obtaining a federal court injunction prohibiting enforcement of the law. Op. 117.

(5) Issues proposed to be raised on appeal, including jurisdictional challenges

The State of Alabama enacted new congressional redistricting legislation in 2023. The district court enjoined it on two grounds. First, the district court held that it would enjoin use of the law because the court had earlier found that Alabama’s 2021 redistricting legislation likely violated Section 2 of the Voting Rights Act, and the 2023 Plan did not create two majority-black districts or something quite close to it. The court held that Plaintiffs did not need to prove that the 2023 Plan likely violated federal law, just that the 2023 Plan did not include two districts in which black voters either comprise a voting-age majority or something quite close to it. Secretary Allen contends that this holding is in error. The 2023 Plan should have remained “the governing law unless it” was “challenged and found to violate” federal law. *Wise v. Lipscomb*, 437 U.S. 535, 540 (1978) (op. of White, J.).

Second, the district court held in the alternative that the 2023 Plan likely violated Section 2. To challenge a redistricting plan under Section 2, a plaintiff must produce an alternative plan that includes an additional majority-minority district that “comports with traditional districting criteria.” *Allen v. Milligan*, 599 U.S. 1, 18 (2023). “Deviation from that map shows it is possible that the State’s map has a disparate effect on account of race.” *Id.* at 26. The Secretary’s contention is that none of Plaintiffs’ plans sufficiently comported with traditional districting criteria because each split multiple communities of interest kept together in the 2023 Plan, and each Plaintiff plan contained either more splits of counties, less compact districts, or both. The district court, in contrast, held that Plaintiffs did not need to produce a plan that matched the 2023 Plan on every or even any particular traditional districting criterion. The court also refused to defer to the Legislature’s findings about communities of interest because doing so would “perpetuate[] vote dilution.” Op. 161. The district court recognized that its reasoning was “circular,” but held that such reasoning was acceptable here because the court had previously found that the 2021 Plan violated Section 2. Op. 162.

Additional related issues include whether the district court's order comports with the Supreme Court's guidance that "§ 2 never requires adoption of districts that violate traditional redistricting principles." *Allen v. Milligan*, 599 U.S. 1, 30 (2023) (cleaned up), and whether the district court's interpretation of Section 2 comports with the Equal Protection Clause or otherwise raises constitutional questions.

The appeal also raises the issue of whether the balance of harms to the parties and the public interest weigh in favor of or against preliminarily enjoining use of the 2023 Plan for congressional elections.